Dato Seri Dr Mahathir bin Mohamad v Derek Davies & Anor

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO S7-22-296-87
AJAIB SINGH J
8 APRIL 1988

Tort – Defamation – Libellous articles suggesting sale of Malaysian territory to Brunei – Whether government of Malaysia had indirectly consented to publication of articles by allowing release of journal for distribution – Whether government had duty to inquire and investigate whether articles were libellous before releasing journal for distribution – Printing Presses and Publications Act 1984, ss 2 & 9

Newspapers – Libellous articles suggesting sale of Malaysian territory to Brunei – Whether government of Malaysia had indirectly consented to publication of articles by allowing release of journal for distribution – Whether government had duty to inquire and investigate whether articles were libellous before releasing journal for distribution – Printing Presses and Publications Act 1984, ss 2 & 9

The plaintiff (the Prime Minister of Malaysia) sued the defendants for libel over two articles published in the *Far Eastern Economic Review* which suggested that the main reason for the plaintiff's visit to Brunei was the proposal to sell Limbang to Brunei. Pending the hearing of the suit, the defendants applied for leave to bring in the Minister for Home Affairs and the government of Malaysia as third parties on the grounds that : (a) by allowing the release of the publications the Minister for Home Affairs and the government of Malaysia had indirectly authorized and consented to the publications; (b) their officers were negligent and in breach of their statutory duties under s 9 of the Printing Presses and Publications Act 1984 for not inquiring into and investigating the articles to see that they did not contravene any law, including the law of defamation.

Held, dismissing the application:

(1) Section 9 of the Act is designed to prohibit the importation of undesirable publications into Malaysia. The officers authorized to implement the provisions of s 9 are empowered to withhold delivery or to return to the sender of any publication outside Malaysia if the officers concerned are satisfied that the publication contains any article which is likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government or which is likely to be contrary to any law or is otherwise prejudicial or likely to be prejudicial to public or national interest.

(2) It is not the duty of any senior authorized officer to inquire into or investigate an article which does not appear to contravene s 9 of the Act and which is not on the face of it contrary to any law. There is nothing in the two articles published in the *Far Eastern Economic Review* to indicate that their contents contravene s 9.

(3) The Minister for Home Affairs and the government of Malaysia cannot be brought in as third parties as there is no nexus between them and the plaintiff. The defendants' application is clearly an attempt to embarrass the plaintiff and prejudice the fair trial of his suit which he has brought against the defendants.

Legislation referred to
Printing Presses and Publications Act 1984 ss 2, 9

T Selvanthiranathan (Senior Federal Counsel) for the plaintiff.

Muhammad Shafee bin Abdullah (*Miss Christina Kow* with him) for the defendants.

Cur Adv Vult

Ajaib Singh J: The Prime Minister is suing the *Far Eastern Economic Review* ('the *Review*') and its editor Mr Derek Davies for libel over two publications in the Review dated 21 May and 4 June 1987.

The first article under the intelligence column of the *Review* refers to the two-day visit of the Prime Minister to Brunei in March this year and suggests that the main reason for the visit was not the ostensible one of improving transport links with Brunei but that, as understood by the *Review*, foremost on the agenda was a proposal to sell Limbang situated in the Fifth Division of Sarawak to Brunei at a starting price of US$6 billion.

The second article was a prominent retraction and apology. It retracted its earlier report and offered sincere apologies. The article went on to say that the earlier report was published in good faith from sources which in the past had proved to be both well-informed and reliable.

Pending the hearing of the suit the defendants are now applying for leave to bring in the Minister of Home Affairs and the government of Malaysia as third parties. They say that if the court decides the libel suit in favour of the Prime Minister and award him damages then they would want contribution or indemnity from the Minister of Home Affairs and the government of Malaysia on the ground that the two publications were released for distribution with the consent and acquiescence of the Minister of Home Affairs and the government of Malaysia and/or by the negligent acts and omissions of their officers.

Encik Muhammad Shafee bin Abdullah for the defendants relies on s 9 of the Printing Presses and Publications Act 1984 which states as follows:

> (1) Without prejudice to anything in this Act, a senior authorized officer may refuse the importation into Malaysia or withhold delivery or return to the sender thereof outside Malaysia any publication which he is satisfied contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be prejudicial to public interest or national interest.
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> (2) Notwithstanding subsection (1), a senior authorized officer may allow importation or delivery of any publication after any part of the publication which he considers objectionable under any of the grounds specified in subsection (1) has been, to his satisfaction, obliterated, deleted, erased or removed.

(3) Any person who is not satisfied with the decision of a senior authorized officer under subsection (1) may, within fourteen days of such decision, appeal in writing to the Minister whose decision shall be final.

Under s 2 of the Printing Presses and Publications Act a senior authorized officer means:

(a) any police officer not below the rank of assistant superintendent;
(b) any officer of Customs not below the rank of superintendent;
(c) any officer of the Postal Services Department not below the rank of senior postal officer;
(d) any other public officer declared by the Minister to be a senior authorized officer for the purpose of this Act.

Encik Muhammad Shafee contends that the defendants' application to bring in the third parties ought to be allowed. He says that the Minister of Home Affairs and the government of Malaysia are necessary parties for a full and final determination of the suit which the Prime Minister has brought against the defendants. It would be a duplicity of proceedings and unnecessary waste of time and expense if the defendants were to bring separate suits against the Minister of Home Affairs and the government of Malaysia.

The grounds on which Encik Shafee bases his contention are two-fold. First, he submits that by allowing the release of the publications the Minister of Home Affairs and the government of Malaysia had indirectly authorized and consented to the publications. Secondly, the senior authorized officers were negligent and in breach of their statutory duties for not inquiring into and investigating the articles to see that they were not libellous. It was submitted that the phrase 'contrary to any law' in s 9(1) of the Act was wide enough to cover any law whatsoever. Therefore the senior authorized officers not only had the power to stop the distribution of the articles or delete the objectionable parts thereof but had the duty to inquire and investigate whether the articles contravened any law including the law of defamation.

With respect I cannot agree with Encik Shafee's submission. His interpretation of s 9 is in my view altogether fallacious.

Section 9 of the Printing Presses and Publications Act is designed to prohibit the importation of undesirable publications into Malaysia. The officers authorized to implement the provisions of s 9 are empowered to withhold delivery or return to the sender of any publication outside Malaysia if the officers concerned are satisfied that the publication contains any article which is likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government or which is likely to be contrary to any law or is otherwise prejudicial or likely to be prejudicial to public or national interest.

The officers concerned are empowered, however, to allow importation or delivery of any publication after any part thereof which they consider objectionable is obliterated, deleted, erased or removed.

But it is not the duty of any senior authorized officer to inquire into or investigate an article which does not appear to contravene s 9 of the Act and which is not on the face of it contrary to any law. There is nothing in the two articles published in the *Review* to indicate that their contents contravene s 9. Anyone reading these articles may well think that the contents are true. And if the contents are not true and are libellous then it would be left to the person aggrieved to take such action as he may deem fit to vindicate his position – as the Prime Minister has now done by bringing the libel suit against the *Far Eastern Economic Review* and its editor. It is not the function or duty of any senior authorized officer to probe into any article which does not on the face of it contravene any law.

For these reasons too it cannot therefore be said that the Minister of Home Affairs and the government of Malaysia consented to the publications through the acts and omissions of their officers.

On the other hand if in fact a publication does prima facie contravene s 9 then the senior authorized officer need not inquire into or investigate the matter because he is empowered to take action forthwith in accordance with s 9 and stop the undesirable publication from being distributed or have the objectionable parts deleted.

The Minister of Home Affairs and the government of Malaysia cannot be brought in as third parties as there is no nexus between them and the plaintiff. And there is also no reasonable cause of action which the plaintiff or the defendants can maintain against the Minister of Home Affairs and the government of Malaysia.

The third party procedure invoked by the defendants is misconceived. It is an abuse of the process of the court and cannot be sustained. The defendants' application is clearly an attempt to embarrass the Prime Minister and prejudice the fair trial of his suit which he has brought against the defendants.

The application is dismissed with costs.

Application dismissed.

Solicitors: *Shafee & Co.*

Reported by *Ng Sheau Jiuan*